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COMPANY LONG TERM DISABILITY PLAN

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 LOVEY MARTIN,
16 Plaintiff,

17 v.

18 DOCTORS MANAGEMENT
COMPANY LONG TERM
19 DISABILITY PLAN,
20 Defendant.
21

CASE NO. CV 07-5952 CW

[Assigned for all purposes to the
Honorable Claudia Wilken; Ctrm 2]

ANSWER TO COMPLAINT

ACTION FILED: 11/26/07

22 Defendant Doctors Management Company Long Term Disability Plan
23 (hereinafter "the Plan"), for itself alone, hereby answers plaintiff's complaint for
24 ERISA benefits as follows:

25 1. Responding to paragraph 1, the Plan admits that the action is brought under
26 29 U.S. C. §§ 1132(a)(1)(B), (e) and (g) of the Employee Retirement Income Security
27 Act of 1974 (hereinafter "ERISA") as it involves a claim for benefits under an
28 employee benefit plan regulated and governed under ERISA. The Plan further

1 admits that this action involves a federal question. The Plan also admits that it
2 resides or may be found within the district where this action was filed. The Plan
3 lacks sufficient information to admit or deny the remaining allegations contained in
4 paragraph 1 of the complaint, and on that basis denies each and every remaining
5 allegation contained in that paragraph.

6 2. Responding to paragraph 2 of the complaint, the Plan is informed and
7 believes that Plaintiff Lovey Martin was an employee of Doctors Management
8 Company. The Plan admits that Doctors Management Company established a long
9 term disability plan for certain of its employees. The Plan admits that Doctors
10 Management Company purchased a group long term disability contract issued by
11 Prudential Insurance Company of America. The Plan further admits that it was and
12 is an employee benefit plan as defined by 29 U.S.C. § 1002(3). The Plan asserts that
13 plaintiff's characterization of Prudential Insurance Company of America's role with
14 respect to the long term disability plan calls for legal conclusion.

15 3. Responding to paragraph 3 of the complaint, the Plan is informed and
16 believes and on that basis denies that plaintiff was disabled according to the terms of
17 the Prudential policy and denies that plaintiff was eligible for benefits under the
18 Plan. The Plan lacks sufficient information to admit or deny the remaining
19 allegations contained in paragraph 3 of the complaint, and on that basis denies each
20 and every remaining allegation contained in that paragraph.

21 4. Responding to paragraph 4 of the complaint, the Plan is informed and
22 believes and on that basis denies that plaintiff was disabled within the meaning of the
23 Plan. The Plan is informed and believes that in approximately May 2005, plaintiff
24 Lovey Martin submitted a claim for long term disability benefits to Prudential
25 Insurance Company of America. The Plan lacks sufficient information to admit or
26 deny the remaining allegations contained in paragraph 4 of the complaint, and on that
27 basis denies each and every remaining allegation contained in that paragraph.

28 5. Responding to paragraph 5 of the complaint, the Plan admits that, on

1 October 17, 2005, Prudential Insurance Company of America wrote a letter denying
2 Plaintiff's claim for long term disability benefits. The Plan denies each and every
3 remaining allegation contained in paragraph 5 of the complaint.

4 6. The Plan lacks sufficient information to admit or deny the allegations
5 contained in paragraph 6 of the complaint, and on that basis denies each and every
6 allegation contained in that paragraph.

7 7. The Plan is informed and believes and on that basis denies that Prudential
8 has persisted in an improper and wrongful denial of long term disability benefits to
9 plaintiff. The Plan lacks sufficient information to admit or deny the allegations
10 contained in paragraph 7 of the complaint, and on that basis denies each and every
11 allegation contained in that paragraph.

12 8. The Plan lacks sufficient information to admit or deny the allegations
13 contained in paragraph 8 of the complaint, and on that basis denies each and every
14 allegation contained in that paragraph.

15 9. The Plan is informed and believes and on that basis denies that Prudential
16 has persisted in an improper and wrongful denial of long term disability benefits to
17 plaintiff. The Plan lacks sufficient information to admit or deny the allegations
18 contained in paragraph 9 of the complaint, and on that basis denies each and every
19 allegation contained in that paragraph.

20 10. The Plan is informed and believes and on that basis denies that Prudential
21 has persisted in an improper and wrongful denial of long term disability benefits to
22 plaintiff. The Plan lacks sufficient information to admit or deny the remaining
23 allegations contained in paragraph 10 of the complaint, and on that basis denies each
24 and every remaining allegation contained in that paragraph.

25 11. The Plan refers to and incorporates its responses to paragraphs 1 through
26 10 herein by reference as though fully set forth herein.

27 12. The Plan denies each and every allegation contained in paragraph 12 of
28 the complaint.

1 13. The Plan denies each and every allegation contained in paragraph 13 of
2 the complaint.

3 14. The Plan denies that plaintiffs are entitled to each and every request for
4 relief contained in paragraphs 1 through 3 of the Prayer for Relief, or to any relief at
5 all.

6 **AFFIRMATIVE DEFENSES**

7 In addition to the foregoing admissions and denials, the Plan asserts the
8 following affirmative defenses:

9 **FIRST AFFIRMATIVE DEFENSE**

10 **(Failure to State a Claim for Relief)**

11 15. The Complaint and each and every claim for relief alleged therein fail to
12 state facts sufficient to constitute a claim for relief.

13 **SECOND AFFIRMATIVE DEFENSE**

14 **(Failure to Mitigate Damages)**

15 16. If Plaintiff sustained any damages as alleged in his Complaint, that
16 damage was proximately caused and/or contributed to by his failure to mitigate his
17 damages. Plaintiff's failure to mitigate damages diminishes or bars recovery herein
18 by plaintiff.

19 **THIRD AFFIRMATIVE DEFENSE**

20 **(Failure to Exhaust Administrative Remedies)**

21 17. Plaintiff failed to exhaust his administrative remedies available under the
22 written Plan document and pursuant to the Employee Retirement Income Security
23 Act of 1974 ("ERISA") [29 U.S.C. 1001, *et seq.*] prior to initiating this action.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 **(Prudence of the Plan)**

26 18. At all times relevant herein, the Plan acted reasonably and prudently with
27 respect to this matter.
28

FIFTH AFFIRMATIVE DEFENSE

(Failure to Perform)

19. Plaintiff failed to meet or perform all the necessary covenants, conditions, obligations and/or promises required to be performed in accordance with the terms and conditions of the long term disability plan at issue in this action.

SIXTH AFFIRMATIVE DEFENSE

(Excuse)

20. Plaintiff has expressly or impliedly by operation of law excused the Plan from any and all obligations, if any, relating to the Complaint.

SEVENTH AFFIRMATIVE DEFENSE

(Justification)

21. Any conduct, actions, or omissions attributable to the Plan were at all times justified, fair and reasonable under the circumstances.

EIGHTH AFFIRMATIVE DEFENSE

(Policy Defense - Contractual Provisions)

22. Plaintiff is not entitled to benefits under the terms of the policy, and his claim is subject to the terms, conditions and exclusions of the policy. Moreover, any benefits are subject to offset in accordance with the terms of the policy.

NINTH AFFIRMATIVE DEFENSE

(Standard of Review)

23. The decision of the claims administrator is entitled to deference, and any such decision should be based on the administrative record.

TENTH AFFIRMATIVE DEFENSE

(Release)

24. Plaintiff has knowingly released the Plan from any and all liability and from any and all rights to benefits as alleged in the Complaint.

ELEVENTH AFFIRMATIVE DEFENSE

(Indispensable Party)

25. Plaintiff's Complaint fails to join an indispensable party who will be responsible for the payment of benefits at issue here, and cause or contributed to plaintiff's claimed damages, if any.

TWELFTH AFFIRMATIVE DEFENSE

(Additional Affirmative Defenses)

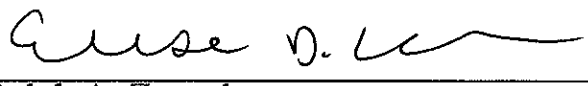
26. The Plan presently has insufficient knowledge or information upon which to form a belief as to whether it may have additional, as yet unknown, affirmative defenses and thereby reserves the right to assert such further and appropriate defenses upon acquiring such knowledge and information as may give rise to such as yet unknown defenses.

WHEREFORE, the Plan prays as follows:

1. That plaintiff take nothing by virtue of the Complaint on file herein;
2. That judgment be entered in favor of Doctors Management Company Long Term Disability Plan;
3. For attorneys' fees and costs of suit incurred herein; and
4. For such other and further relief as the Court deems just and proper.

DATED: February 11, 2008

LEWIS BRISBOIS BISGAARD & SMITH LLP

By 

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